

ON THE LEVEL

A Service of the
State of Alabama
Home Builders
Licensure Board
WINTER 2017



HOME BUILDERS
LICENSURE BOARD
www.hblb.alabama.gov



Licensure Board Honors a Longstanding Member



Jack B. Reid

Jack B. Reid was first appointed to serve as a member of the Board in 1995 and was proudly reappointed by three consecutive governors serving more than twenty years, until his term was ended unexpectedly by his death in the fall of 2015. As a member of the Board, Mr. Reid served the Board in many different capacities over the years, including chairman, vice chairman and investigative committee member. Nominated by his fellow Board members, Mr. Reid also represented the Board as a member of the Residential Energy Code Board of Alabama until the term limit of ten years was met in 2006.

A resolution by the Alabama Home Builders Licensure Board honoring the memory of Mr. Reid was presented to his family at the 2016 Home Builders Association of Alabama Summer Conference in Destin, Florida. Mr. Reid was a true professional home builder committed to the building industry, and a man of strong moral character, determination, and faith. He will be greatly missed. ▲

Welcome New Board Member

The Home Builders Licensure Board welcomes **Kenneth Chandler** as its most recent appointee for Congressional District 5. Mr. Chandler is a custom home builder in Huntsville, Alabama and has served the residential construction industry on local, state, and national levels for over 30 years. Mr. Chandler comes from a long line of builders in north Alabama. His father and an uncle were career homebuilders and he now has a nephew in the business. One of Mr. Chandler's most important contributions has been his work on the Alabama Home Builders Foundation promoting and supporting individuals in trade participation and education. Mr. Chandler has served on the Foundation Board of Directors for 9 years and as its president for 1 year. Mr. Chandler was appointed to serve out the remaining term of Jack Reid of Florence, Alabama who passed away in the fall of 2015. ▲



Kenneth Chandler

AN UNLICENSED BUILDER? *Who, Me?*

Jamie A. Durham, Deputy Attorney General
Home Builders Licensure Board

Did you know that, even if you've been licensed since 1994, you could still be an unlicensed builder? If you have changed the way you do business since you first received your license, read on to see whether you could be an unlicensed builder.

The name of the individual or corporation holding the license is printed on your license card. Unless you have formed a legal corporate entity, such as an LLC, a corporation, or a partnership, you hold an individual license. Any name other than your own personal name is simply a trade name, or a name in which you do business.

For example, John Q. Builder enters into contracts as Better Builder, the sign on his truck says Better Builder, and the name on his business bank account is Better Builder. Better Builder is not an LLC, a corporation, or a partnership. John Q. Builder appropriately submits an individual application for a license and lists Better Builder as his trade name. The license is issued to John Q. Builder. **John Q. Builder, individually, is responsible and liable for any and all work performed under this license.**

At a later date, John Q. Builder decides to incorporate Better Builder. John Q. Builder is now entering into contracts as Better Builder, Inc.. He has changed the name on the side of his truck and on his bank account to Better Builder, Inc.. He has even brought his son, Sonny Builder, into the business with him, teaching him the trade and showing him how to run the business. However (and this is when flashing red lights should go off), John Q. Builder still has his individual license, with Better Builder listed as a trade name.

Now John Q. Builder has an unfortunate occurrence. He decides to let Sonny Builder take on his first job. Sonny enters into a contract to build a house, using Better Builder, Inc.'s contract and using John Q. Builder's license number to pull the permit. As sometimes happens, Sonny's first job does not go smoothly. In fact, the homeowners file a consumer complaint with the Board. When the Board receives the consumer complaint, a number of things happen:

1) Better Builder, Inc. is identified as an unlicensed builder.

According to Alabama law, a corporate entity is a stand alone entity, an individual in its own right. That's why the Board licenses corporations separately from individuals. Corporations have the same power to act as an individual.

At the time Better Builder, Inc. entered into its first contract to build a house, it was required by law to hold a corporation home builders license. Since John Q. Builder did not license Better Builder, Inc., but left the license in his individual name, Better Builder, Inc. was not a licensed builder.

2) Sonny Builder is identified as an unlicensed builder.

Whether Sonny Builder says he was working for himself, for the corporation, or for his father, Sonny Builder was an unlicensed builder because he did not hold an individual license, the corporation did not hold a license, and his father's individual license only licenses his father, John Q. Builder.

3) John Q. Builder is charged with license loaning and/or doing business improperly.

John Q. Builder holds the only license issued to any of the three players in this scenario. However, it is an individual license. The only way John Q. Builder can enter into contracts for residential construction is as an individual. Neither his corporation nor his son are licensed through his individual license. The Board may charge John Q. Builder with loaning his license to an unlicensed builder, since both his son and his corporation are unlicensed, or it may charge him with doing business improperly, or both.

What's the result? John Q. Builder, Sonny Builder, and Better Builder, Inc., are all subject to fines. In addition, John Q. Builder is subject to having his license suspended or revoked. Sonny Builder is in the worst situation of the three. In addition to being fined, Sonny Builder is subject to being charged with a Class A misdemeanor, Failure to Obtain a Home Builders License, which carries a penalty of up to \$6,000.00 in fines, plus court costs, and a sentence of up to one year in jail. Since Better Builder, Inc., was not licensed, it is prohibited from bringing suit to enforce the contract against the homeowner. And finally, since John Q. Builder's individual license was used to pull the permit for the job, the homeowner may successfully argue that John Q. Builder, individually, is responsible for the entire job.

Do yourself a favor – make sure you are entering into contracts the way you are licensed, and you are licensed the way you do business. You can always call the Board's staff at 800-304-0853 if you have any questions about your license. Don't wait for the Board to call you. ▲



Disciplinary Actions and Unlicensed Builder Prosecutions

All current disciplinary actions and unlicensed builder prosecutions can be found on the HBLB website at www.hblb.alabama.gov. All actions will remain posted for a period of ninety (90) days. Inquiries pertaining to disciplinary actions and unlicensed builder prosecutions must be submitted in writing to the Home Builders Licensure Board, Legal Division, P. O. Box 303605, Montgomery, Alabama 36130.

Homeowners Recovered over \$6 million

By Darlene Burt

A homeowner who contracts with a licensee of the Board may recover up to \$20,000.00 in economic damages from the Homeowners' Recovery Fund (hereinafter "Fund"). To recover economic damages from the Fund, the homeowner must notify the Board that a lawsuit has been filed against a licensee and be awarded a judgment against the licensee. Once a judgment has been awarded, the homeowner must file a claim showing that there were actual economic damages caused by the licensee's gross negligence, incompetence, or misconduct in the practice of residential home building or that the licensee violated the rules or regulations of the Board. Finally, the homeowner must show that reasonable efforts were made to collect the judgment.

Since its establishment in 1992, the Fund has made 305 payments totaling \$6,016,107.75. Now, let's put that in perspective. Since 1995, the Board has received notice that 1,149 lawsuits have been filed against licensees. Only 26% of these lawsuits actually resulted in payment from the Fund. Many of the lawsuits were dismissed by the court. In some cases, judgments were awarded to the licensee. In a small number of cases, claims were denied by the Board because the homeowner failed to follow provisions set out in the Home Builder Licensure Law.

The Board averages approximately 8,000 licensees per year and receives an average of 52 notices that lawsuits have been filed against licensees. You've heard the phrase: "There's always that one percent". In this case, less than one percent of licensees are involved in lawsuits that cause a liability to the Fund. Payment is made from the Fund in even fewer cases.

There's no argument that \$6 million is a lot of money. However, a comparison of the number of licensees and the number of payments from the Fund shows that the Fund is solvent. This is good news for homeowners because the Fund is there if they need it. It's good news for the licensee because it lessens the chance of an increase in fees. The Board is authorized by statute to require each licensee to pay \$60.00 annually to the Fund. The Board only requires each licensee to pay \$15.00, which is included in the annual licensing fee. It could be argued that the number of payments from the Fund appear low in comparison to the number of licensees because most homeowners aren't aware of the Fund. A better argument is that the overwhelming majority of licensees are operating as the professionals they are licensed to be. ▲

Board Partners with District Attorneys and Law Enforcement



J. Seth Gowan

On August 1, 2016, the Board welcomed J. Seth Gowan as the new staff attorney. Seth comes to the Board from the Montgomery County District Attorney's Office where he served as a Deputy District Attorney for nine years. As a prosecutor, he worked in the juvenile division, street crimes division, and family violence division where he had approximately 60 jury trials. In the family

violence division, Seth prosecuted cases involving child victims and elderly victims, including financial exploitation of the elderly. Seth's prosecution background is a welcomed addition to the Board staff and our effort to continue aggressive enforcement of the home builder's law against unlicensed builders in the state. Seth's contacts with district attorneys and the Office of Prosecution services have already paid dividends. Not only are we strengthening our communication with district attorneys to ensure prosecution of misdemeanor cases against unlicensed builders, but we are also partnering with them in the investigation and prosecution of more felony cases related to unlicensed home building and home repair fraud. With Seth's help and guidance, our investigators have partnered with local district attorneys and local law enforcement for felony prosecutions in six different Alabama circuits to include felony theft and financial exploitation of the elderly. Additionally, the Board has worked closely with the State Department of Insurance fraud division to investigate unlicensed builders who have violated state insurance laws which has led to felony charges. The Board is pleased to be working in partnership with district attorneys and law enforcement to further protect consumers from unscrupulous unlicensed builders. ▲

LEGAL COMPLIANCE CORNER

The Board has received over 100 consumer complaints for Fiscal Year 2017. One of the most common mistakes, if not the most common mistake made by builders is failure to follow the terms of the contract. Specifically, licensees fail to comply with written change order clauses within the contract. "Each licensee shall utilize a valid written contract when engaging in the business of residential home building" Ala. Code Sec. 34-14A-7(6)(e). When a contract contains a provision for written change orders, it is the builder's responsibility to make sure the provision is followed. While it is easy to have a conversation with the homeowner, decide to do something different and then just make the change, not memorializing that change in writing as the contract calls for can be problematic in a host of ways. At a minimum, not doing so will result in disciplinary action for misconduct in the practice of residential homebuilding if a consumer complaint is filed against the licensee. The difficult part of this is when through investigation, there is no cause for disciplinary action against a builder for quality of work issues, but simply because he or she just did not follow their own contract. Remember, follow the terms of your contract!



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Hotline

1-800-304-0853

**Protect Alabama Consumers
and Your Industry.**

Report Unlicensed Builder Activity!

(All calls will remain anonymous.)